

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: November 17, 2004

Division: Growth Management

Bulk Item: Yes ☐ No ☒

Department: Planning

AGENDA ITEM WORDING: A public hearing to adopt an Interim Moratorium Ordinance deferring award of ROGO market rate allocations for ROGO Year 12, Quarter 4 to Year 13, Quarter 1, and Year 13, Quarter 1, to Year 13, Quarter 2; providing notice that no market rate allocations will be available for award after Year 13, Quarter 1 pending enactment of proposed Rule 28-20.110, Florida Administrative Code; providing for expiration hereof 60 days after effective date.

ITEM BACKGROUND:

ROGO allocations were not made for the fourth quarter Year 12 (April 13-July 13, 2004). Policy 101.2.13 of the 2010 Comprehensive Plan enacted by the Governor and Cabinet through F.A.C. Rule 28-10.100, requires that the total number of allocations issued during a ROGO year shall not be in excess of nutrient reduction credits earned by removing or replacing onsite waste water disposal systems or upgrading centralized systems. For Year 11, July 2002-July 2003, there were 41 applicants with sufficient rankings approved but awaiting nutrient reduction credits. Therefore, 41 allocations had to be subtracted from the allocations available in Year 12.

The Board of County Commissioners on September 15, 2004, directed staff to "freeze" the allocation list to assure that those applicants who would have received an allocation for the 4th Quarter Year 12 were not bumped in line because later applicants had higher scores. This directive will also impact certain applicants in Quarter 1 Year 13, as the number of allocations to be made in Year 12, Quarter 4 will not be sufficient to accommodate the number of applicants awaiting permits.

[It should be noted that the Planning Commission will not consider this ordinance until November 16, 2004.]

PREVIOUS RELEVANT BOCC ACTION: N/A

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval

TOTAL COST: N/A
COST TO COUNTY: N/A

BUDGETED: Yes ☐ No ☐
SOURCE OF FUNDS _____

REVENUE PRODUCING: Yes ☐ No ☒ **AMOUNT PER MONTH** _____ **Year** _____

APPROVED BY: County Atty ☒ OMB/Purchasing ☐ Risk Management ☐

DIVISION DIRECTOR APPROVAL:


Timothy J. McGarry, AICP

DOCUMENTATION: Included ☒ To Follow ☐ Not Required ☐

DISPOSITION: _____

AGENDA ITEM # T-3

An Ordinance by the Monroe County Board of County Commissioners adopting an interim development ordinance deferring award of ROGO market rate allocations for ROGO year 12, Quarter 4 to Year 13, Quarter 1, and year 13, Quarter 1 to year 13, quarter 2; providing notice that no market rate allocations will be available for award after year 12, quarter 1 pending enactment of proposed rule 28-20.110, Florida Administrative Code; providing for expiration hereof 60 days after effective date.

Development Review
Planning Commission

November 2, 2004
November 16, 2004

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AN INTERIM DEVELOPMENT ORDINANCE DEFERRING AWARD OF ROGO MARKET RATE ALLOCATIONS FOR ROGO YEAR 12, QUARTER 4 TO YEAR 13, QUARTER 1, AND YEAR 13, QUARTER 1 TO YEAR 13, QUARTER 2; PROVIDING NOTICE THAT NO MARKET RATE ALLOCATIONS WILL BE AVAILABLE FOR AWARD AFTER YEAR 13, QUARTER 1 PENDING ENACTMENT OF PROPOSED RULE 28-20.110, FLORIDA ADMINISTRATIVE CODE; PROVIDING FOR EXPIRATION HEREOF 60 DAYS AFTER EFFECTIVE DATE.

WHEREAS, Policy 101.2.13 of the Monroe County Year 2010 Comprehensive Plan enacted under Rule 28-20.100 F.A.C. requires that a nutrient reduction credit be available before a new residential permit may be issued; and,

WHEREAS, this policy also provides that the number of allocation awards to be issued in the next ROGO year will be reduced by the number of applications with sufficient scores to receive a ROGO allocation but still awaiting a nutrient reduction credit at the end of the previous ROGO year; and,

WHEREAS, at the end of ROGO Year 11, there were 41 such applications with sufficient ranking to receive an award, but waiting for a nutrient reduction credit, resulting in a net reduction of 41 from the total otherwise available in the new ROGO year; and,

WHEREAS, after forfeiting those ROGO allocations due to lack of nutrient reduction credits from the previous year, ultimately, there were no ROGO allocations available to be issued for the 4th Quarter of Year 12 and no allocations were therefore awarded; and,

WHEREAS, in the next ROGO year, the County will have allocations available; however, the total number of allocations available after the 95 forfeitures required by application of Policy 101.2.13 will yield a net total of 51 market rate allocations; and,

WHEREAS, the BOCC directed staff to ensure that current ROGO applicants be vested in order of ranking for award of allocations that otherwise would have been made during Year 12, Quarter 4 and Year 13, Quarter 1, had it not been for the challenge to proposed Rule 28-20.110; and,

WHEREAS, proposed Rule 28-20.110 will amend Policy 101.2.13 to eliminate the punitive reductions in ROGO allocation awards required under the existing policy language; and

WHEREAS, it is uncertain when proposed Rule 28-20.110 will become effective as it has been challenged by the Florida Keys Citizens Coalition, Inc. and Last Stand, Inc.; and,

WHEREAS, Section 9.5-122.1 MCC does not authorize vesting of applicants in order of ranking from ROGO Quarter to ROGO Quarter; and,

WHEREAS, the Growth Management Division and legal counsel have prepared interim development regulations to amend Section 9.5-122.1 (c) and (d) for a specified period to allow

for such vesting to implement the BOCC directive.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1. The purpose and intent of this Interim Development Ordinance is in accordance with the Board of County Commissioners' directive of September 21, 2004 to ensure fairness to all applicants who would otherwise have qualified for ROGO awards but for the forfeitures due to application of Policy 101.2.13 in ROGO Years 12 and 13.

Section 2. Those 30 applicants who submitted their applications by July 13, 2004 and who otherwise would have received market rate ROGO allocations in Year 12, Quarter 4 shall be vested to receive said allocations in Year 13, Quarter 1.

Section 3. Additionally, those 33 applicants who submitted their applications by October 13, 2004 and who otherwise would have received market rate ROGO allocations in Year 13, Quarter 1 shall be vested to receive said allocations in Year 13, Quarter 2.

Section 4. Any applicants who submitted their applications after October 13, 2004 who would otherwise receive a market rate ROGO allocation but for operation of the forfeiture provision contained in Policy 101.2.13 shall receive said award at such time as same may become available.

Section 5. Pursuant to its lawful authority and the pending legislation doctrine as set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2d DCA, 1980) the Board of County Commissioners hereby establishes the interim development regulations set forth in this Ordinance, which shall remain in full force and effect until the expiration of this legislation within 60 days of its effective date.

Section 6. If any section, subsection, sentence, clause, item, charge or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 7. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 8. The ordinance is hereby transmitted to the Florida Department of Community Affairs pursuant to Chapters 163 and 380, Florida Statutes.

Section 9. This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission finding the amendment in compliance with Chapter 163 and 380, Florida Statutes.

Section 10. This ordinance shall stand repealed within 60 days of its effective date in accordance with the provisions herein, unless repealed sooner.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the ____ day of _____, 2004.

Mayor Murray Nelson _____

Mayor Pro Tem David Rice _____

Commissioner Charles "Sonny" McCoy _____

Commissioner George Neugent _____

Commissioner Dixie Spehar _____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

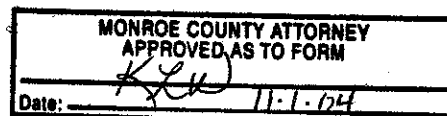
BY _____

Mayor Murray Nelson

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

Deputy Clerk



Board of County Commissioners
Staff Report

Memo

October 28, 2004

TO: Board of County Commissioners
FROM: K. Marlene Conaway, Director
RE: Interim Development Ordinance
Deferring and Awarding ROGO Allocations

Background

ROGO allocations were not made for the fourth quarter Year 12 (April 13-July 13, 2004). Policy 101.2.13 of the 2010 Comprehensive Plan enacted by the Governor and Cabinet through F.A.C. Rule 28-10.100, requires that the total number of allocations issued during a ROGO year shall not be in excess of nutrient reduction credits earned by removing or replacing onsite waste water disposal systems or upgrading centralized systems. For Year 11, July 2002-July 2003, there were 41 applicants with sufficient rankings approved but awaiting nutrient reduction credits. Therefore the 31 market rate allocations and 11 of the affordable housing allocations remaining for Year 12 Quarter 4 were forfeited.

In Year 12 (July 2003 - July 2004) there were 95 applicants with sufficient rankings approved without nutrient reduction credits. Hopefully, before the end of Year 12 we will have the new Rule approved and be able to roll over the 95 allocations rather than lose them or alternatively have sufficient nutrient reduction credits from facility hookups. If the 95 are subtracted from the 158 allocations the County may allocate under the old Rule, 63 allocations (50 market rate and 13 affordable) may be allocated this year. The Planning Commission will be able to make an allocation for the 1st Quarter Year 13 and a partial allocation for the 2nd Quarter..

The Planning Commission at their meeting of September 8, 2004, after receiving comments from concerned applicants about losing their *place in line* for the award of an allocation, requested staff to find a way to defer the award until the first allocation period in Year 13.

The Board of County Commissioners at their meeting of September 15, 2004 gave a similar direction to staff.

Analysis

The LDRs clearly state in Section 9.5-122.2 that if allocation applications are greater than the quarterly allocation they are outside of the quarterly allocation. In order to "vest" the ranking of the applicants to that which would have occurred if allocations had been

available, an Interim Development Order (IDO) is required to modify the regulations to permit the deferral.

Accordingly, as a result of vesting those applications in the system for Quarter 4 Year 12, applications received between July 13, 2004 and October 13, 2004 (1st Quarter Year 13) were submitted without the knowledge that the previous Quarter rankings would be carried forward. Therefore it has been determined that the ranking for the 1st Quarter Year 13 should also be vested to the 2nd Quarter of Year 13. Applicants were put on notice by October 13, 2004 that allocation awards may not be made for the remainder of Year 13 (July 13, 2004 to July 12, 2005).

Recommendation

Staff recommends that the Monroe County Board of County Commissioners approve the attached Interim Development Ordinance deferring award of Market Rate allocations for ROGO Year 12, Quarter 4 to Year 13, Quarter 2 and Year 13, Quarter 1 to Year 13, Quarter 2.

cc. Tim McGarry, Division Director
Kerry Willis